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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.C., a Person Coming Under the
Juvenile Court Law.

B222314
(Los Angeles County
Super. Ct. No. CK40551)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LIBERTY K.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Marilyn Mordetzky, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Liberty K. (mother) appeals the juvenile court's order granting a Welfare and Institutions Code, section 388 petition filed by the Los Angeles County Department of Children and Family Services (DCFS), which sought to revert mother's visitation from unmonitored to monitored visits. Mother maintains that the trial court abused its discretion in granting the petition by relying on insufficient evidence. We disagree, and affirm the order.

FACTS AND PROCEDURAL BACKGROUND

In 2007, mother's two oldest children, A.S. (age 7) and A.L.S. (age 9), lived with their father pursuant to a juvenile court order entered in April 2001. On January 18, 2007, DCFS was contacted after mother refused to return A.S. to her step-mother following an unmonitored visit with the child. The Sheriff's Department responded, and arrested mother for an outstanding warrant. A.S. was released to her stepmother, while two of mother's younger children, A.C. (age 4) and A.K. (age 5 months), were released to DCFS. Another child, B.K. (age 2), was with his paternal grandparents at the time, where he had been living since his birth.

DCFS filed a petition alleging that A.C., B.K. and A.K. came within the jurisdiction of the juvenile court under section 300, subdivisions (b) and (g). An amended petition was sustained, as to mother, based on a history of substance abuse and domestic violence. Reunification services and monitored visits were ordered. A.C. and A.K. were subsequently placed with a foster mother.

In October 2008, the juvenile court terminated reunification services. During the period between the sustaining of the petition and the termination of services, mother, at times, had been incarcerated, had been living with a boyfriend with a criminal record and with whom she had another child (Jonathan, born May 2008), and had only sporadically complied with her case plan.

In an April 2009 status review report, DCFS indicated that mother was complying with her case plan, having completed a substance abuse program, attended conjoint counseling with A.C., and submitted to drug testing with negative results, although

mother did not timely and reliably observe the visitation schedule. The social worker reported, however, that mother continued to not take on a parental role with the children and depended on the foster mother and paternal grandmother to assist her in caring for the children during visits. She reportedly interacted with the children only when she observed that the social worker was watching her, but failed to parent the children when she believed she was not being observed, ignoring them and allowing them to wander off. Mother's indifference to A.C. and B.K. was apparent to the social worker, who reported that mother had not established a nurturing, stable and enduring parental relationship with A.C., B.K. or A.K., and that the children did not see her as a mother figure. Rather, the three children were reportedly attached to their caregivers, whom they viewed as parental figures. A.C. and A.K.'s foster mother, as well as B.K.'s grandmother, both indicated a willingness to adopt the children and to provide a permanent home for them. The permanent plan hearing was set for June 17, 2009.

On February 19, 2009 and again on April 27, 2009, mother filed a section 388 petition, requesting that the juvenile court return the children to her custody. The petition was to be heard at the permanent plan hearing. Mother maintained that she had completed her case plan and was taking care of 9-year-old A.S. and newborn Jonathan. She indicated that her home had adequate space for all of the children. DCFS maintained that there was no evidence that mother's relationship with A.C., B.K. and A.K. promoted their well-being to such a degree as to outweigh the benefits they would receive from a permanent home with their current caretakers who wished to adopt them, and so recommended that mother's section 388 petition be denied.

In its June 17, 2009 report, DCFS reported that the children were thriving in their placements. Mother requested visits outside the presence of the foster mother or paternal grandmother. Mother was described as attentive and willing to take suggestions from the social worker. DCFS nevertheless continued to voice concerns that these improvements in mother's behavior might be only a temporary response to the prospect of termination of her parental rights. The hearing was continued several times for purposes of giving notice to various parties.

On July 29, the juvenile court denied mother's section 388 petition but granted her unmonitored visitation with the children. The permanent plan hearing was calendared for October 6, 2009.

DCFS prepared an interim report on September 9, 2009 evaluating the mother's unmonitored visits with the children. A.C.'s foster mother reported that the child had suffered a head injury and a bruise under her eye during an unmonitored visit on August 22, 2009. The child reported that, while swimming at the home of her mother's friend, Rhonda, she had performed a backflip in the Jacuzzi and had bumped her head. When the bruise worsened, the foster mother took A.C. to the hospital for treatment. Mother originally reported that she was not aware that the child had suffered an injury during the visit. During a subsequent interview regarding this incident, mother reported that she was in the Jacuzzi adjacent to the pool when A.C. bumped her head. Mother stated that she forgot to notify the foster mother of the accident and that her omission was not intentional; she later acknowledged that this statement was not true.

A second incident occurred at the pool the same day: A.S. and A.C. were playing together in the shallow end of the pool, by the steps. A.S. was a swimmer, but A.C. was not, and so she wore protective gear or "floaties" when she first entered the pool. After being in the water for 20 minutes or so, A.C. asked her mother if she could remove the floaties. Mother gave her permission, and the floaties were removed. Some time after that, A.C. lost her footing in the water and felt like she was drowning. A.S. stated that A.C. was gasping for air, and both girls reported that A.S. "saved" A.C. When questioned by DCFS, mother at one time stated that she was right next to the pool providing immediate supervision to A.C.'s in-water activities, and at another time indicated that her friend Rhonda was watching the children while they were in the pool. Neither adult was actually in the water with the girls.

A.C. was again injured during a subsequent unmonitored visit when she went behind a door to retrieve a ball and mother's boyfriend opened the door, striking the child in the head. A.C. was taken to the hospital to treat an open head wound. The social worker believed that the accident which led to this head trauma was the result of poor

supervision of the child, which itself was a result of the fact that mother was caring for a number of children at the time, including a three month old and a one year old.

In October 2009, DCFS filed a section 388 petition, requesting that the juvenile court modify mother's visitation orders so that they would again be monitored. The matter was set for a contested hearing, which was concluded on February 2, 2010.

The juvenile court was most concerned with the events which transpired at the pool, during which A.C. injured her head while performing a backflip in the Jacuzzi, and was gasping for breath and believed that she was drowning after she removed flotation devices while in the shallow end of the pool. DCFS's written reports were introduced into evidence. Mother, her friend Rhonda C., at whose home the pool incident occurred, and two Child Social Workers, testified at the hearing.

After hearing the testimony and considering the documentary evidence, the court granted the section 388 petition, changing mother's visits to monitored. Mother timely appealed that order.

STANDARD OF REVIEW

A juvenile court's order granting or denying a section 388 petition is reviewed for abuse of discretion. Whether a previous order should be modified, and whether a change would be in the child's best interests, are questions which are committed to the sound discretion of the juvenile court, and will not be disturbed on appeal unless an abuse of discretion is clearly established. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Thus, if there was "any basis" for the challenged order (*In re Ritchie* (1984) 159 Cal.App.3d 1070, 1072) or "a reasonable or even fairly debatable justification" for it (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1176), we will affirm the order.

DISCUSSION

Mother maintains that DCFS did not prove by a preponderance of the evidence that monitored visits were in A.C.'s best interest. Mother rests this argument on the fact that there was conflicting evidence regarding whether A.C. was safe while visiting

mother. She concludes from the conflicting evidence "that there is not a clear picture of what transpired at the pool. [A.C.] seems to think she nearly drowned, [A.S.] seems to think she saved [A.C.] from drowning, and mother and Rhonda believe they had the situation under control"

The juvenile court reached a different conclusion from the evidence presented: The court found that Rhonda was "clearly not credible" and that mother's testimony was inconsistent with her prior statements, making her rendition of the facts unreliable. After hearing all of the evidence, the juvenile court described mother's behavior at the pool as demonstrating a "lack of judgment," in that she brought young children to a swimming pool, allowed them to play in the pool without an adult being in the pool with them, and gave A.C., a non-swimmer, permission to remove the protective gear which would keep her afloat. In addition, A.C. was injured when she performed a backflip in the Jacuzzi which mother admits she did not witness, an acknowledgement that she was not properly supervising the child at that time.

In short, the DCFS met its burden of proving, by a preponderance of the evidence, that a change in the visitation order to require monitored visits was in the minors' best interests.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.